

Exhibit

A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTHONY DAUNT,

Plaintiff,

vs.

TOC

JOCELYN BENSON, in her official capacity as Michigan Secretary of State; JONATHAN BRATER, in his official capacity as Director of the Michigan Bureau of Elections; SHERYL GUY, in her official capacity as Antrim County Clerk; DAWN OLNEY, in her official capacity as Benzie County Clerk; CHERYL POTTER BROWE, in her official capacity as Charlevoix County Clerk; KAREN BREWSTER, in her official capacity as Cheboygan County Clerk; SUZANNE KANINE, in her official capacity as Emmet County Clerk; BONNIE SCHEELE, in her official capacity as Grand Traverse County Clerk; NANCY HUEBEL, in her official capacity as Iosco County Clerk; DEBORAH HILL, in her official capacity as Kalkaska County Clerk; JULIE A. CARLSON, in her official capacity as Keweenaw County Clerk; MICHELLE L. CROCKER, in her official capacity as Leelanau County Clerk; ELIZABETH HUNDLEY, in her official capacity as Livingston County Clerk; LORI JOHNSON, in her official capacity as Mackinac County Clerk; LISA BROWN, in her official capacity as Oakland County Clerk; SUSAN I. DEFETYER, in her official capacity as

1 Otsego County Clerk MICHELLE
2 STEVENSON, in her official
3 capacity as Roscommon County
Clerk; and LAWRENCE KESTENBAUM,
in his official capacity as
Washtenaw County Clerk,

Defendants.

8 TRANSCRIPT OF HEARING ON MOTION TO DISMISS AND
9 RULE 16 SCHEDULING CONFERENCE
10 BEFORE THE HONORABLE ROBERT J. JONKER, CHIEF JUDGE
11 GRAND RAPIDS, MICHIGAN

October 27, 2020

14 Court Reporter: Glenda Trexler
15 Official Court Reporter
16 United States District Court
685 Federal Building
110 Michigan Street, N.W.
Grand Rapids, Michigan 49503

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19 computer-aided transcription.

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1 Grand Rapids, Michigan

2 October 27, 2020

3 3:57 p.m.

4 P R O C E E D I N G S

5 *THE COURT:* All right. We're here on the case of
6 Daunt against Benson, 1:20-cv-522, at the Rule 16. There are
7 motions to dismiss pending from the State defendants as well as
8 one of the intervenors.

9 Let's start with appearances and we'll go from there.
10 For the plaintiff?

11 *MR. NORRIS:* Good afternoon, Your Honor, Cam Norris
12 for the plaintiff, Mr. Daunt.

13 *THE COURT:* All right. Thank you.

14 And for the defendants?

15 *MS. BRIGGS:* Good afternoon, Your Honor,
16 Assistant Attorney General Elizabeth Husa Briggs on behalf of
17 Secretary of State Jocelyn Benson and Director of Elections
18 Jonathan Brater.

19 *THE COURT:* All right. Thank you.

20 For our intervenors who do we have?

21 *MS. BRAILEY:* Emily Brailey on behalf of
22 Philip Randolph and Rise, Inc.

23 *THE COURT:* Thank you.

24 *MS. PRESCOTT:* Good afternoon, Your Honor,
25 Sarah Prescott, local counsel for the same.

1 **MR. DONNINI:** And good afternoon, Your Honor,
2 George Donnini from Butzel Long on behalf of the intervenor
3 defendant League of Women Voters.

4 **THE COURT:** All right. Thank you.

5 For today's purposes if you use the microphone right
6 in front of you, you're probably going to be best off.
7 Especially if you want to stay masked, which is fine. It will
8 be easier for us to hear. Just sit down, pull the microphone
9 close. If anybody can't sit down in court -- and I get that,
10 lawyers are not used to sitting down in court -- feel free to
11 walk over to the podium and use the microphone there. Either
12 way.

13 We're here for the Rule 16, and, of course, that's a
14 scheduling conference. You know, I did want to hear from the
15 parties, especially the moving parties, on the motion to
16 dismiss. We had the original motion to dismiss directed to the
17 initial Complaint. At that time it wasn't clear to me anyway
18 whether the plaintiff would be seeking relief in advance of
19 next Tuesday's election or whether it was simply seeking relief
20 down the road in the fullness of time so to speak.

21 If I'm understanding it right, Mr. Norris, your
22 relief is directed to, you know, down the road and nothing
23 specific to next Tuesday. Is that right?

24 **MR. NORRIS:** Correct, Your Honor.

25 **THE COURT:** Okay. Then there was an

1 Amended Complaint and another response. The reason I bring it
2 up is because, you know, I had reviewed the briefing and case
3 law in that first round, and, of course, now again in the
4 second round, I know the briefing isn't complete, but I have to
5 say it doesn't seem like a hard standing case to me. It seems
6 like somebody like this plaintiff has standing, and if this
7 plaintiff doesn't, I don't know who does under a National
8 Voting Rights Act kind of claim. And, frankly, I think the
9 only National Voting Rights Act case I saw in the briefing from
10 any of the moving parties is one that granted standing
11 ultimately. It was the Texas case. So I want to make sure I
12 understand where the moving parties are going on that, but I'm
13 not inclined, from what I've seen so far, to think that there's
14 much chance of a standing dismissal, at least on Rule 12.

15 So let me go to Ms. -- is it Ms. Briggs?

16 **MS. BRIGGS:** That's fine, Your Honor.

17 **THE COURT:** Okay. Pull that forward and make sure I
18 understand at least the essence of where you are on it, and
19 then we'll talk to any of the moving parties on the intervening
20 side who want to address it as well. Go ahead.

21 **MS. BRIGGS:** Well, Your Honor, we do believe that
22 Mr. Daunt has not established standing. And I would point
23 you -- I mean, if you're focusing on the Texas case in
24 particular, Mr. Daunt is not -- Mr. Daunt is an individual.
25 He's not --

1 *THE COURT:* Well, let me start out with do you have
2 any National Voting Rights Act case other than the American
3 Civil Rights Union case?

4 *MS. BRIGGS:* I don't believe so, Your Honor, but we
5 do have cases definitely dealing with --

6 *THE COURT:* I get that, but under the NVRA that's the
7 only one I saw. At least that's the only one you can think of
8 right now.

9 *MS. BRIGGS:* Okay.

10 *THE COURT:* And at the end of the day, at least some
11 plaintiffs had standing in that case, right?

12 *MS. BRIGGS:* Not individuals, Your Honor.

13 *THE COURT:* I said at least some plaintiffs had
14 standing in that case, right?

15 *MS. BRIGGS:* Only the organizations.

16 *THE COURT:* So some plaintiffs had standing in that
17 case.

18 *MS. BRIGGS:* The organizations, but they did not have
19 the --

20 *THE COURT:* Did some plaintiff have standing in that
21 case or not?

22 *MS. BRIGGS:* Yes, but not as individuals.

23 *THE COURT:* Okay. So if Mr. Daunt joined an
24 organization he could have standing? Is that the position?

25 *MS. BRIGGS:* Well, the organization would have to be

1 the plaintiff.

2 *THE COURT:* All right. Anything else on the standing
3 argument from the State defendants?

4 *MS. BRIGGS:* Well, we've also argued that we do not
5 believe his letter, the February 26th letter, is sufficient.
6 That he doesn't give sufficient notice as to what his actual --
7 he doesn't identify any policy or procedure or any -- basically
8 any reason by which the Secretary of State or the director --
9 why Michigan's general program are not sufficient under the
10 NVRA.

11 *THE COURT:* All right. Anything else on the State
12 side?

13 *MS. BRIGGS:* Well, we don't believe that a
14 generalized -- we believe basically what he's shown is that --
15 and what he's alleged is that this is just a generalized
16 grievance. He's just appearing just on behalf as a Michigan
17 voter and there's nothing specific. He's not even alleging to
18 be representative or involved in any politics with respect to
19 the specific counties at issue or that he alleges are showing
20 erroneous, for lack of a better word, erroneous voter
21 registration numbers, so . . .

22 And Article III standing, Your Honor, does require
23 more than just a generalized grievance about an alleged problem
24 with government activity. It does require a concrete and
25 direct injury. And it does require something that could be

1 fairly redressable from this Court.

2 Mr. Daunt is not associated even or does not even
3 allege to be associated with many of the counties that he
4 claims the data showing that there's a problem with. Under the
5 case law, Your Honor, as we briefed, that's a -- standing is a
6 threshold issue, and he's not established standing.

7 *THE COURT:* Okay.

8 *MS. BRIGGS:* Thank you.

9 *THE COURT:* Thank you.

10 From the intervenors, I don't think that there was a
11 motion from the League of Women Voters, but there were from
12 some of the others. So I don't know who would like to speak on
13 behalf of the moving parties on the intervenor side.

14 *MS. BRAILEY:* Your Honor, I can speak. This is
15 Emily Brailey on behalf of Philip Randolph and Rise.

16 *THE COURT:* Okay. Thank you.

17 *MS. BRAILEY:* We largely agree with what Ms. Briggs
18 has stated. We agree with everything in that motion to
19 dismiss, including about the generalized grievance issue and
20 that plaintiff doesn't have standing.

21 And I'll add that we also don't think there is an
22 injury in fact about -- related to voter fraud or vote
23 dilution.

24 *THE COURT:* Or dilution? Okay.

25 *MS. BRAILEY:* Or vote dilution. I think that -- you

1 know, we rest on the cases we cited in our brief. There's a
2 lot of recent precedent where their complaints can't stand on
3 such small evidence of or no evidence of voter fraud.

4 *THE COURT:* Do you have any National Voter Rights Act
5 case? I don't think you cited the Texas case, but --

6 *MS. BRAILEY:* That's correct, Your Honor.

7 *THE COURT:* But do you have any other National Voter
8 Rights Act case --

9 *MS. BRAILEY:* No, Your Honor, but I am happy to
10 provide --

11 *THE COURT:* -- on voter registration? Go ahead.

12 *MS. BRAILEY:* I'm sorry. I'm happy to provide
13 additional briefing if you would like us to do that.

14 *THE COURT:* Do you know if there is any case?

15 *MS. BRAILEY:* Not off the top of my head right now.

16 *THE COURT:* All right. Thank you.

17 *MS. BRAILEY:* And in addition, you know, we also
18 think the remaining factors of standing including causation and
19 redressability cannot be met here.

20 And on top of that, I mean, I guess you're only
21 asking about standing right now, but we also have the 12(b) (6)
22 failure to state a claim.

23 *THE COURT:* Yeah, go ahead. You can touch on that
24 too if you want to.

25 *MS. BRAILEY:* So, again, this goes back to vote

1 dilution and whether that can even be recognized as a claim in
2 this context. And really it's only been addressed in the
3 reapportionment cases. And even if it is recognized outside of
4 those contexts, the plaintiff would need to show at least that
5 he's part of a group that is purportedly having its votes
6 diluted, and that just doesn't appear in this Complaint.

7 And finally, we echo a lot of what the State has in
8 their motion to dismiss regarding the current list maintenance
9 program and that there's just no evidence in that Complaint
10 that Michigan is not already implementing a reasonable and
11 adequate maintenance program.

12 *THE COURT:* All right. Thank you.

13 I don't know if -- I can't remember, Ms. Prescott,
14 are you representing the League of Women Voters or are you
15 representing the same groups or --

16 *MS. PRESCOTT:* The same groups, Your Honor.

17 *THE COURT:* Okay. Do you want to add anything on
18 their behalf?

19 *MS. PRESCOTT:* No, I don't. Thank you.

20 *THE COURT:* All right. And from Mr. Donnini, I
21 didn't see a motion from your clients. Do you want to have
22 anything to say on this? And just stay seated if you do.

23 *MR. DONNINI:* Sure, Your Honor. It is a habit of
24 mine.

25 Your Honor, we did file an Answer. I would just

1 point out that we believe also -- we believe the arguments in
2 the motions to dismiss that were filed are meritorious. We
3 don't think that this states a valid claim upon which relief
4 can be granted. And that is in our Answer. However, we did
5 file an Answer and we are prepared to move forward if it does
6 survive, but for the arguments that have been made in court and
7 in the briefing, we agree that this case does not state a claim
8 and ought to be dismissed.

9 **THE COURT:** All right. I know your time to respond
10 hasn't fully run yet from the plaintiff's side, Mr. Norris, but
11 do you want to be heard at all today on where you're going with
12 that? I know you touched in your earlier response on the
13 notice letter, not really on the other issues.

14 **MR. NORRIS:** Thank you, Your Honor. Just briefly.
15 Your Honor is correct that there have been NVRA cases in the
16 past filed under Section 8, and those cases have been litigated
17 past the 12(b) stage. These are not cases that are normally
18 dismissed for lack of standing.

19 And one point that I would add to the prior case law,
20 I believe all the NVRA-specific cases that have been cited all
21 predate the Supreme Court's decision in Spokeo, which
22 Your Honor, I'm sure, is familiar with. And in Spokeo the
23 Supreme Court made very clear as a holding for the first time
24 that Congress can actually affect how the Article III inquiry
25 works. And here we have an express cause of action from

1 Congress that allows individuals to bring claims under
2 Section 8 of the NVRA. That statute says individuals. It
3 allows people like Mr. Daunt to sue if they file the requisite
4 presuit notice letter, as he did.

5 And as the Court explained in *Spokeo*, Congress can
6 elevate theories of causation and types of injuries that might
7 not otherwise satisfy Article III and by recognizing those
8 theories can make them satisfy Article III. And we think
9 that's precisely the case with the NVRA.

10 But even aside from *Spokeo*, even pre-*Spokeo* these
11 types of claims are cognizable and plaintiffs have standing to
12 bring them, like Mr. Daunt does.

13 *THE COURT:* All right.

14 *MS. BRIGGS:* May I respond, Your Honor?

15 *THE COURT:* Go ahead. Sure.

16 *MS. BRIGGS:* The private cause of action authorized
17 under the NVRA is only available to a person who has been
18 aggrieved, and Mr. Daunt has not shown any way in which he's
19 been aggrieved. Or at least there's not any factual allegation
20 even in the Complaint as amended that supports that.

21 Secondly, I would point you to page 17 in the State's
22 brief, page ID 320, where we identify and distinguish cases in
23 which -- we distinguish Mr. Daunt's allegations from those in
24 which the Sixth Circuit and the other circuits have found
25 standing in the context of the NVRA. And so we have addressed

1 that as well, Your Honor.

2 Mr. Daunt's allegations in his Complaint even as
3 amended don't rise to that level. He's not shown that he's
4 aggrieved.

5 *THE COURT:* All right. And anything else,
6 Ms. Brailey?

7 *MS. BRAILEY:* Yes, Your Honor. We agree that he has
8 not alleged that he's aggrieved, but on top of that, as we
9 mentioned in our brief on page 3, we also argue that
10 Article III standing is a requirement in and of itself in
11 addition to being aggrieved under the statute. And I would
12 also like to note that, you know, after the response we would
13 like the opportunity to have a reply and we can provide an
14 NVRA-focused brief if that would be helpful to the Court.

15 *THE COURT:* All right. Well, I don't think any
16 additional briefing is needed at this stage, to tell you the
17 truth. And, of course, a ruling on a motion under Rule 12
18 doesn't mean it's the end of the issue. Rule 56 is always
19 there. But for Rule 12 purposes I don't think there's any
20 reason to go forward with further briefing because I think the
21 motions as they stand need to be denied.

22 I think there's clear standing established as a
23 matter of allegations here and at least a plausible claim
24 stated, which is all that needs to be happening at this stage
25 of the case. And I'll just briefly articulate why I think

1 that's the case.

2 The parties are, of course, correct in their briefing
3 that you need under 52 U.S.C. § 2510 a person aggrieved, and
4 then, of course, under Article III of the Constitution somebody
5 is aggrieved that still satisfies the constitutional
6 requirements of standing.

7 In addition, under the National Voter Registration
8 Act you'd also have to show that the individual involved or the
9 person aggrieved satisfied the notice requirement. I think
10 they are all established here. At least as a matter of
11 pleading. Which doesn't mean that the plaintiff ultimately
12 prevails but does, I think, mean that the plaintiff gets to go
13 beyond where they are right now.

14 With respect, first of all, to the notice letter, the
15 notice letter is attached to the First Amended Complaint, and
16 it's, in my view, a fairly detailed statement of why the
17 plaintiff thinks that there's a problem with the Michigan voter
18 registration lists and in particular that the defendants
19 haven't followed through on their obligation to come up with
20 under Section 8 an appropriate general program to remove voters
21 that don't belong on the registration list because they have
22 moved or because there has been a death. And I don't think
23 it's incumbent on the plaintiff in a notice letter to say "Here
24 is the existing program of the state and here are the
25 particular flaws in it." I think it is simply incumbent on the

1 plaintiff to say "Here is why I think there's a problem and why
2 I don't think whatever program you're using, if any, is up to
3 the task."

4 And certainly on the face of things, at least in
5 Leelanau County if you have more registered voters than
6 eligible voters living, at least based on the census data, a
7 reasonable inference, or at least a plausible inference is
8 there's a problem with the system that's been used to address
9 the voter registration list. And there's additional specific
10 examples given. I don't know if those numbers are going to
11 hold up. I don't know if that's going to be explained in some
12 other fashion. But I do think for purposes of a notice letter
13 as well as the allegations of the First Amended Complaint which
14 largely repeat that detail, there's at least a plausible case
15 for a problem with the Section 8 obligation. And whether or
16 not the State has a program, whether or not it's implemented a
17 program, and whether or not it's reasonable, those are merits
18 issues that, of course, aren't decided today and the plaintiff
19 may ultimately not prevail, but I think they have done enough
20 to get that far.

21 What the plaintiff's First Amended Complaint includes
22 in addition to what's in the notice letter is additional
23 factual basis that the plaintiff says illustrates the reasons
24 for their concern in terms of the I think it was about 500,000
25 or so returns that came back when the Secretary of State sent

1 out the absentee applications earlier. It was after the notice
2 letter but before the First Amended Complaint. And I think
3 that adds to the plausibility for purposes of the 12(b) (6) and
4 also gets into where we'll go next which is whether or not
5 Mr. Daunt is an aggrieved person under the statute and
6 sufficiently pleading a basis for standing with Article III.

7 I think that Mr. Daunt in the First Amended Complaint
8 really relies on three main categories of injury that he says
9 are concrete and particularized. He is a voter in the state of
10 Michigan. He is concerned about the possibility that his vote
11 would be diluted. But he's not only focused on that. He's
12 also concerned about the general cloud on the outcome of an
13 election if the registration lists aren't properly purged and
14 reflecting somebody -- or a list that's complied with the
15 Section 8 requirement. And he's concerned that he has to spend
16 extra time and effort policing the efforts of the secretary and
17 the director of elections to make sure these lists are where
18 they need to be and to make sure that the voting is coming off
19 properly. And I don't think that matters that he's doing so or
20 alleging his interest in doing so as an individual as opposed
21 to an organization. The fact that he is expressing the same
22 kind of concern that the organization did in the American Civil
23 Rights Union case from the Western District of Texas is, I
24 think, fundamentally the point. And he alleges a plausible
25 basis for why he as an individual voter in the state and active

1 in Republican politics in his case would be interested and
2 concerned about that, and for purposes of alleging injury I
3 think that's sufficient.

4 The point that the plaintiff makes about Spokeo and
5 the statutory cause of action is, I think, also important.
6 You know, I think so many of us, both at the bench and the bar,
7 from the Supreme Court point of view look at Spokeo as a case
8 that denied standing on a statutory claim or at least found it
9 inadequate as presently alleged and wanted to go back and have
10 the lower courts review it under the new standard. And so it's
11 easily cited and I think to some extent potentially
12 misunderstood as a case that makes standing unusually difficult
13 for a plaintiff seeking to enforce a private right of action
14 under a congressional statute. But in fact, as the
15 Ninth Circuit found on remand in Spokeo, 867 F.3d. 1108 in
16 2017, the fact that Congress makes a decision to create a
17 private right of action is something that the Court is
18 obligated under the Supreme Court's decision and then as
19 interpreted now by the circuits, Second Circuit, Ninth Circuit,
20 when the Congress says "We have the following interests," and
21 here we have a variety of interests at issue in the Voter
22 Registration Act, but two of them certainly are concerned with
23 exactly what Mr. Daunt says he's concerned with, the integrity
24 of the electoral process in ensuring that accurate and current
25 voter registration roles are maintained, when Congress lays

1 those out and says here is a private right of action for a
2 person aggrieved to enforce it, and that person, Mr. Daunt in
3 this case, comes forward, that's close to almost -- I won't say
4 a slam dunk -- but close to saying if not Mr. Daunt, then who?
5 This is exactly the kind of person that Congress had in mind to
6 protect these interests for the reasons that Mr. Daunt
7 articulates in the First Amended Complaint.

8 The intervenors are here, and I thought their claim
9 for intervention was clear enough because they are concerned
10 with also making sure that the other interests of the
11 National Voter Registration Act are recognized and enforced and
12 that we don't unduly purge voter roles, making it more
13 difficult for eligible citizens to register or to participate
14 in elections. They are both sides of the same coin, and I
15 think this is exactly the way Congress thought the interests
16 would be vindicated and protected on all sides. So for me when
17 you have a congressionally created private right of action like
18 this to address exactly the interests that Mr. Daunt says he's
19 suffering from a fear of losing, you have intervenors on the
20 other side who want to make sure things don't go off the rails
21 in removing people who deserve to be there or discouraging them
22 from registering, we have exactly the interests aligned that I
23 think Congress, first of all, had in mind and that the
24 Supreme Court in Spokeo and the circuits following Spokeo have
25 recognized as part and parcel of what's involved in a statutory

1 cause of action.

2 I already touched on the American Civil Rights Union
3 case which I think -- we might have missed something -- but I
4 think it's the only National Voter Registration Act case I saw
5 cited by anybody on the standing issue, did result in standing
6 for the plaintiff, albeit not on every theory advanced but
7 at least on multiple theories. And the only other cases that I
8 saw outside of the NVRA context that talked about general
9 dilution or fear of dilution I think are all readily
10 distinguishable and that none of those arise under a situation
11 like the National Voter Registration Act where Congress has
12 articulated the private right of action and reasons for it.

13 The other case that I think was referenced of
14 interest in probably the State briefing, it might have been the
15 intervenors, was the Buchholz case from our circuit under the
16 Fair Debt Collection Practices Act where standing was not
17 recognized, but that's a perfect example of where the interests
18 that the party plaintiff was talking about was not within the
19 scope of the cause of action that Congress had set up, and I
20 think in that case the trial court here, Judge Quist, and then
21 the Sixth Circuit affirming him said, "No, that's not right.
22 We don't have Article III standing here even though you might
23 have a technical issue under the statute." And that's because
24 in Buchholz the complaint was that the lawyers were harassing
25 the plaintiff by writing him letters, telling him he had to pay

1 on a debt that he didn't contest. And undoubtedly that may
2 have created anxiety, but not the kind of anxiety that was at
3 the root of the Fair Debt Collection Practices Act.

4 And I think in this case the situation is quite
5 different. The concerns that Mr. Daunt articulates around
6 potential for dilution, potential for a cloud on the election,
7 and potential for extra work and resources policing the
8 validity and propriety of the election are exactly interests
9 that are within the scope of the NVRA, just as the interests
10 the intervenors intend to protect are other interests on the
11 other side of the NVRA coin. So from my perspective there is
12 proper notice in advance. There is at least a plausible basis
13 for a cause of action alleged under the National Voter
14 Registration Act and a plausible basis for standing articulated
15 under Article III. So for those reasons I'm going to deny the
16 pending motions to dismiss.

17 Of course, the parties remain free to raise all these
18 issues as the record develops in addition to the merits, and
19 that's what we'll litigate going forward. But the motions I'm
20 denying today.

21 The schedule is really not something the parties
22 disagree about very much. At least once the motions are
23 decided. So let me do this: I'll articulate deadlines that I
24 would propose and then see if anybody has comments or
25 objections to that or concerns about it or anything else that

1 we need to address.

2 From a scheduling point of view I'd start with
3 paragraph 5 of your Joint Status Report on joinder, and rather
4 than have a specific date, which is pretty early in any case,
5 I'm simply going to say do that by motion if and when a party
6 thinks there's a need to do that, or a stipulation if everybody
7 agrees, but I won't give you a separate date for that.

8 For discovery overall I'm going to propose June 30 of
9 next year, which is a little longer than you're thinking but I
10 think appropriate. And I'd key a series of expert disclosures
11 off that. If you're going to use an expert on an issue where
12 you have the burden of proof, disclose with reports by
13 March 31. Any other expert you're using disclose by April 30.
14 And if you need a rebuttal expert after that, something
15 surprises you in the April 30 disclosure, disclose with reports
16 by May 15.

17 We'd give you a motion cutoff of July 31, and then I
18 would set a second Rule 16 sometime after the motions are filed
19 so we can get together, find out what's going to be litigated
20 substantively in those motions, whether there's room at that
21 point for ADR, maybe there is, maybe there isn't, and what else
22 needs to be happening from a scheduling point of view. So
23 those would be the overall deadlines I'd be prepared to set
24 today.

25 For discovery limits my inclination would be to do

1 just the generic discovery limits at this point under the rules
2 which would be 10 depositions per side as the current limit
3 with the seven-hour presumptive limit, 25 interrogatories. I
4 think the parties want to limit it to 25 requests for
5 admission. That's fine with me too.

6 So let me start with the plaintiff, Mr. Norris,
7 concerns, questions, or other things we need to take up from
8 your perspective?

9 *MR. NORRIS:* Thank you, Your Honor. I think the only
10 disputed question in the status report was the number of
11 depositions.

12 *THE COURT:* Right.

13 *MR. NORRIS:* We initially sued several county
14 defendants because that's, you know, the data we have, and the
15 Complaint suggests problems at the county-wide level. And we
16 would like to be able to depose all the county defendants.
17 However, we don't feel strongly about an initial 10
18 depositions. Perhaps the county defendants are not fruitful
19 avenues for discovery, and maybe we'll find that out. As long
20 as -- I think my colleagues have already expressed to me that
21 if we need additional depositions we can raise that by motion
22 later and they would be accommodating.

23 *THE COURT:* Okay. Let's go to Ms. Briggs for the
24 defendants.

25 *MS. BRIGGS:* Your Honor, Mr. Norris is correct, we do

1 believe that 10 depositions is plenty. And with respect to the
2 counties, based on your September order he can submit
3 interrogatories and requests for admission to the counties, and
4 I don't -- it seems to me that whatever information he may need
5 to get from them could be gotten from them in that way. So
6 from our perspective 10 depositions is plenty given this case.

7 **THE COURT:** Okay. Ms. Brailey.

8 **MS. BRAILEY:** We also agree that 10 depositions is
9 plenty, and we also agree that the federal rule set these
10 limits and we think it's fair to abide by them. And, again, we
11 agree that if we need to reassess down the road we would be
12 amenable to conferencing.

13 **THE COURT:** Okay. Ms. Prescott, anything you want to
14 add?

15 **MS. PRESCOTT:** No, Your Honor.

16 **THE COURT:** All right. Mr. Donnini.

17 **MR. DONNINI:** Your Honor, we agree as well, but I
18 don't have anything further to add.

19 **THE COURT:** Okay. Well, I'm going to go ahead with
20 the deadlines that I outlined, then, and the discovery limits.
21 It doesn't preclude a motion down the road if the plaintiff
22 says "Hey, I need depositions that go beyond that," or it
23 doesn't preclude the parties from agreeing to that if they see
24 it the same way by that time. But I do think that for starting
25 purposes the presumptive limits make sense here. Even from the

1 allegations that the plaintiff has in the First Amended
2 Complaint, there's going to be some counties that are more the
3 focus of interest than others. And beyond that, as Ms. Briggs
4 indicates, there are opportunities short of deposition to get
5 information that may satisfy what the parties need or at least
6 provide a basis for the Court down the road to say "Well, I
7 think some additional depositions are needed" or not.

8 So that's what I'm going to do is stick with the
9 presumptive limits for now. But, of course, anybody is free to
10 either seek protective orders limiting that or adding to that
11 if the facts develop on the ground differently.

12 From any party's perspective are there other things
13 that should be addressed today? Plaintiff?

14 **MR. NORRIS:** No, Your Honor.

15 **THE COURT:** Or defense?

16 **MS. BRIGGS:** No, Your Honor.

17 **THE COURT:** Or intervenors?

18 **MS. BRAILEY:** No, Your Honor.

19 **MR. DONNINI:** No, Your Honor.

20 **THE COURT:** Okay. Thank you all. See you next time.

21 **MS. BRIGGS:** Thank you.

22 **THE CLERK:** Court is adjourned.

23 *(Proceeding concluded at 4:29 p.m.)*

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1 I certify that the foregoing is a correct transcript
2 from the record of proceedings in the above-entitled matter.

3 I further certify that the transcript fees and format
4 comply with those prescribed by the court and the Judicial
5 Conference of the United States.

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7 Date: November 3, 2020
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9 /s/ **Glenda Trexler**
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Glenda Trexler, CSR-1436, RPR, CRR